

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 JUST FILM, INC.; RAINBOW BUSINESS
SOLUTIONS, doing business as
5 PRECISION TUNE AUTO CARE;
BURLINGAME MOTORS, INC.; DIETZ
6 TOWING, INC.; THE ROSE DRESS,
INC.; VOLKER VON GLASENAPP; JERRY
7 SU; VERENA BAUMGARTNER; TERRY
JORDAN; LEWIS BAE; and ERIN
8 CAMPBELL, on behalf of
themselves, the general public
9 and those similarly situated,

No. C 10-1993 CW

ORDER GRANTING
LEASING DEFENDANTS
LEAVE TO FILE A
FURTHER
DECLARATION IN
SUPPORT OF
PLAINTIFFS' MOTION
TO SEAL AND
REQUIRING
PLAINTIFFS TO
EXPLAIN A
DISCREPANCY

10 Plaintiffs,

11 v.

12 MERCHANT SERVICES, INC.; NATIONAL
PAYMENT PROCESSING; UNIVERSAL
13 MERCHANT SERVICES, LLC; UNIVERSAL
CARD, INC.; JASON MOORE; NATHAN
JURCZYK; ROBERT PARISI; ERIC
14 MADURA; FIONA WALSHE; ALICYN ROY;
MBF LEASING, LLC; NORTHERN
15 FUNDING, LLC; NORTHERN LEASING
SYSTEMS, INC.; GOLDEN EAGLE
LEASING, LLC; LEASE SOURCE-LSI,
LLC; LEASE FINANCE GROUP, LLC;
16 JAY COHEN; LEONARD MEZEI; SARA
KRIEGER; BRIAN FITZGERALD; SAM
17 BUONO; MBF MERCHANT CAPITAL, LLC;
RBL CAPITAL GROUP, LLC; WILLIAM
18 HEALY; JOSEPH I. SUSSMAN; JOSEPH
I. SUSSMAN, P.C.; and SKS
ASSOCIATES, LLC,

19 Defendants.

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23 On November 13, 2012, the Court directed Plaintiffs to file a
24 supplemental declaration in support of their motion to seal.
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26 On November 14, 2012, Leasing Defendants filed a declaration
27 in support of Plaintiffs' motion for leave to file under seal, as
28 required by the Court in Docket Nos. 408 and 413. Docket No. 419.

1 In their filing, Leasing Defendants requested permission to submit
2 a response to any declaration filed by Plaintiffs pursuant to the
3 Court's November 13, 2012 order.

4 Later on November 14, 2012, Plaintiffs filed a supplemental
5 declaration in support of their motion to seal. Docket No. 420.
6 In the supplemental declaration, Plaintiffs corrected certain
7 information that they had provided the Court previously
8 identifying which party or nonparty had designated as confidential
9 each portion of the documents that they sought to seal. Among
10 other corrections, Plaintiffs stated for the first time that they
11 sought to seal a portion of their motion for leave to amend
12 because it contained facts and argument based on information that
13 Leasing Defendants had designated as confidential.

14 Having reviewed the parties' filings, the Court finds good
15 cause to grant Leasing Defendants leave to file a supplemental
16 declaration in response to Plaintiffs' November 14, 2012 filing.
17 Leasing Defendants shall do so by November 21, 2012.

18 The Court notes that, in the declaration filed by Leasing
19 Defendants today, they make numerous conclusory statements that
20 disclosure of certain information "will result in irreparable harm
21 to Leasing Defendants if made publicly available to competitors."
22 "'[S]ources of business information that might harm a litigant's
23 competitive standing' often warrant protection under seal.'" In
24 re NCAA Student-Athlete Name & Likeness Licensing Litig., 2012
25 U.S. Dist. LEXIS 140779, at *15 (N.D. Cal. 2012) (quoting Nixon v.
26 Warner Communications, 435 U.S. 589, 597 (1978)) (formatting in
27 original). However, "a decision to seal such records must still
28 be based on articulated reasons." Id. (citing Apple Inc. v.

1 Psystar Corp., 658 F.3d 1150, 1162 (9th Cir. 2011); Contratto v.
2 Ethicon, Inc., 227 F.R.D. 304, 307 (N.D. Cal. 2005) (finding that
3 an assertion of good cause based on harm to competitive and
4 financial position requires a showing of "specific demonstrations
5 of fact, supported where possible by affidavits and concrete
6 examples"). Leasing Defendants may remedy these deficiencies in
7 their supplemental declaration.¹ Failure to do so may result in a
8 court order permitting these documents to be filed in the public
9 record, subject to the privacy protections contained in Federal
10 Rule of Civil Procedure 5.2(a).

11 In Docket Nos. 411 and 420, Plaintiffs identified Leasing
12 Defendants as the only ones who designated Exhibit UUU as
13 confidential. In Leasing Defendants' November 14, 2012
14 declaration, they state that a third-party, FNBCT, had also
15 produced this document and designated it as highly confidential.
16 Within one Court day of the date of this Order, Plaintiffs shall
17 explain this discrepancy to the Court. If FNBCT designated this
18 document as confidential and later waived or withdrew its
19 designation, Plaintiffs shall provide a copy of any such written
20 waiver or, if the waiver was given in non-written form, a
21 declaration attesting under penalty of perjury that such a waiver
22 was given.

23 The Court warns the parties that, in the future, they will be
24 expected to comply with the requirements of Civil Local Rule 79-5,
25 General Order 62 and the Court's Orders, and to establish that
26

27 ¹ Leasing Defendants should also review pages two and three
28 of the Court's November 13, 2012 Order, which address the good
cause and compelling reasons standards for sealing court records.

1 documents are sealable without repeated instructions from the
2 Court. Further, absent good cause shown, the Court will not give
3 parties extra opportunities to do so.

4 IT IS SO ORDERED.

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6 Dated: 11/15/2012


CLAUDIA WILKEN
United States District Judge